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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 95-61
Competition in the Market for the	)	
Delivery of Video Programming	)	

COMMENTS OF LIFETIME TELEVISION

LIFETIME TELEVISION

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June 30, 1995

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In the Matter of

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

CS Docket No. 95-61

COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits its comments in response to the Commission's Notice of Inquiry ("NOI") in the above-captioned proceeding. The FCC's ongoing review of the status of competition in the video marketplace affords Lifetime the opportunity to urge the Commission to: (i) promote competition in multichannel video distribution and programming both by fostering the viability of alternative multichannel video program distributors and by reducing disincentives for the expansion of cable channel capacity; and (ii) refrain from the unwarranted application of the program access rules to non-vertically integrated programmers for whom the marketplace and existing regulations already pose tremendous obstacles.

Despite lacking the benefits of assured access and financial support inherent in a vertically integrated relationship,[1] Lifetime has been able to obtain tremendous audience growth by delivering high quality contemporary,

[1] Lifetime is a joint venture of The Hearst Corporation and Capital Cities/ABC Video Enterprises, Inc., a wholly-owned subsidiary of Capital Cities/ABC, Inc.

innovative entertainment and informational programming of particular interest to women -- an audience that Lifetime believes has been largely underserved by other programmers. Reaching 96% of all cable homes, Lifetime ranks seventh[2] in both prime time and total day ratings among cable program services.[3]

Because approximately 70 percent of Lifetime's revenues are derived from advertising, Lifetime is committed to maximizing its audience reach by every available means. Accordingly, Lifetime has long made its programming available to home satellite dish distributors, wireless cable operators, and (upon their more recent emergence) direct broadcast satellite distributors. Lifetime is also actively seeking carriage on video dialtone systems and looks forward to the added carriage that will be provided by the local exchange carriers as they enter the video distribution business.

In short, Lifetime welcomes a robustly competitive video marketplace in which the success of its existing service -- and possible future services -- turns simply on the quality and value of its programming and its ability to attract

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[2] A.C. Nielsen Cable Network Audience Composition Report (1st quarter 1995).

[3] Despite these strong ratings, Lifetime has been unable to negotiate more favorable channel positioning on many cable systems, which research suggests further enhances a programmer's viewership and popularity.

audiences.[4] Lifetime thus seeks a regulatory environment consistent with this competitive vision.

I. Competition Fostered by Both the Creation of Additional Outlets and Increased Cable Channel Capacity Would Serve Consumers and Programmers Alike

For the reasons set forth below, Lifetime strongly believes that the Commission should work to increase competition in the video distribution marketplace. Competition, Lifetime submits, is best fostered by creating additional viable outlets for programming as well as incentives for cable operators to increase channel capacity.

Indeed, Congress has demonstrated a clear preference that competition, not governmental regulation, control the marketplace for the distribution of multichannel video programming. This preference for the marketplace was set forth expressly in the 1992 Cable Act.[5] The pro-competition,

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[4] Lifetime has earned more than 200 awards and award nominations in the decade since its inception. In 1995, Lifetime has won two CableACE Awards, the industry's most prestigious awards, for the best actress and best supporting actress in a movie categories, and Lifetime's "Picture What Women Do" one-hour public affairs special was nominated for a CableACE Award.

[5] See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) at § 2(b) (hereinafter "1992 Cable Act"). ("It is the policy of Congress in this Act to . . . (2) rely on the marketplace, to the maximum extent feasible, to achieve [the availability to the public of a diversity of views and information through cable television and other video distribution media].").

anti-regulation stance of Congress has been evidenced more recently by legislation designed to significantly overhaul the Communications Act. Both the recently passed Senate bill and the pending House bill generally call for a vibrant, competitive telecommunications sector characterized by thriving competition and minimal regulation.[6]

Lifetime agrees that competition, not regulation, should be the primary goal of policymakers, especially with this long-envisioned competitive landscape closer than ever to becoming a reality. For example, more direct broadcast satellite systems are emerging to serve customers; wireless cable operators are becoming more competitive through the Commission's deregulatory efforts; and local exchange carriers are beginning to test their own video distribution systems.

This competitive landscape will provide benefits to both programmers and consumers alike. Programmers clearly benefit from the presence of additional viable outlets for their program services. This results not only in increased demand for and investment in existing program services, but also creates a market for new program services. Consumers, in turn, enjoy more diversified and better quality program services and the downward pressure on retail rates fueled by

[6] S.652, 104th Cong., 1st Sess. (1995). H.R. 1555, 104th Cong., 1st Sess. (1995).

heightened competition among distributors. At the same time, with more programming services available for distribution than ever before, distributors can afford not to carry programming services that price themselves out of the marketplace.[7]

Lifetime has therefore consistently urged the Commission to continue to promote competition and eliminate regulations that unfairly handicap any competitor. This approach is appropriate not only for alternative distribution technologies, but for cable operators as well.

Lifetime has previously described the squeeze on cable channel capacity caused by the 1992 Cable Act.[8] The must carry and retransmission consent rules have, in tandem, often worked to disfavor, if not displace, cable program services in the battle for cable carriage. Those rules, coupled with a rate regulation regime that perhaps inadvertently increased the incentive of cable operators to offer program services on an *á la carte* or other lower-penetration basis, exerted tremendous pressure to bump advertiser-supported program services from the broadly distributed tiers that are critical to their success -- if not to completely eliminate carriage

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[7] From June 1991 to June 1995, according to the A.C. Nielsen rating service and published reports, the number of basic cable programming services increased by 84%.

[8] *See*, *e.g*. Comments of Lifetime Television, M.M. Docket No. 92-266 (filed June 29, 1994) at 6.

of those services altogether. Lifetime has therefore sought regulatory relief not just for adding new services to available channels, but also to increase channel capacity and to reward investment in existing program services.[9] Consistent with its previous filings, Lifetime urges the Commission to foster a competitive marketplace in which all competitors are fairly rewarded for increasing their investment in programming options for the viewing public.

II. There is no Basis for Application of Program Access Rules to Non-Vertically Integrated Programmers

With the express focus of FCC policy on competition rather than regulation, Lifetime is compelled to comment upon the passing suggestion that the Commission might consider extending the program access rules to non-vertically integrated program providers.[10] For the reasons set forth below, Lifetime strongly believes that the premise upon which the program access rules are based is wholly inapplicable to non-vertically integrated programmers and that any such expansion of the rules would needlessly burden already-disadvantaged independent programmers.

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[9] Id. at 13-21.

[10] NOI at ¶ 90. Lifetime assumes that the Commission is asking whether to recommend that Congress extend the reach of the program access rules in this manner.

The program access rules contained in the 1992 Cable Act were imposed because of the belief that vertically integrated program suppliers "have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies."[11] It was the desire of Congress to check the perceived ability of cable operators to use their programing interests to impede competition in the distribution marketplace that led Congress to impose the program access rules only on vertically integrated satellite cable programmers. Congress did not seek thereby to regulate the program marketplace per se, but rather to limit the ability of MSOs to handicap competition in multichannel video distribution.

Conversely, the interest in checking the leverage and incentives of MSO-owned programmers is simply not operative when applied to non-vertically integrated programmers that derive no benefit by favoring one distribution technology over another. Rather, the incentive of independent programmers is to market their services aggressively to all technologies in order to obtain maximum distribution -- whether by cable, home satellite dish distributors, wireless cable, direct broadcast satellites, video dialtone or otherwise. This is especially the case for a service such as

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[11] 1992 Cable Act at § 2(a)(5).

Lifetime, whose reliance on advertising revenues and targeting of an unusually broad "niche" renders it highly dependent on maximum distribution.

Indeed, the Commission has previously found the record to demonstrate that, far from receiving benefits, non-vertically integrated programmers may have been denied carriage or advantageous channel positioning by cable operators seeking to favor an affiliated program service.[12] It is worth noting, in this regard, that Lifetime initially offered its programming without charge to cable operators in order to gain distribution.

In sum, non-vertically integrated programmers, by definition, lack the leverage that prompted Congress to impose the program access rules on a carefully selected group -- vertically integrated programmers. Lifetime submits that it would defy logic to impose those rules on independent programmers that not only enjoy none of the potential benefits available to vertically integrated programmers but are themselves struggling to maximize distribution.

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[12] See 1992 Cable Act of §2(a)(5)("[C]able operators have the incentive and ability to favor their affiliated programmers."); see also H.R. Rep. 628, 102d Cong., 2d Sess. (1992) at 41 ("[S]ome cable operators favor programming services in which they have an interest . . .").

III. **Conclusion**

Lifetime urges the Commission to find that there is no basis to apply the program access rules to non-vertically integrated programmers. Instead, Lifetime urges the Commission to foster a competitive distribution environment that -- through the creation of additional outlets and added cable channel capacity -- will continue to allow a healthy and vibrant program marketplace to develop.

Respectfully submitted,

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